January 28, 2004

Attn: Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Regulation Z; Docket No. R-1167
Regulation B; Docket No. R-1168
Regulation E; Docket No. R-1169
Regulation M; Docket No. R-1170
Regulation DD; Docket No. R-1171

Dear Secretary Johnson:

Thank you for providing the opportunity to comment on the proposals published last November by the Federal Reserve that would significantly modify the consumer protection regulations' requirements on the form of required disclosures. We are a $320 million mutual institution with 4 branches and 100 employees based in Concord, New Hampshire. While the intent of the proposed changes is admirable, if adopted, these changes will have a significant adverse and costly effect on banks; the proposals will impose a huge compliance burden on banks, promote lawsuits and potential liability for good faith compliance, and lengthen disclosures.

The proposal makes the form of disclosures consistent among the various consumer protection regulations. Specifically, it adopts the "clear and conspicuous" standard, along with examples, currently contained in Regulation P (Privacy). The Board has indicated that its purpose is two-fold: 1) to facilitate compliance by institutions by creating consistency and 2) ensure that consumers receive noticeable and understandable information. However, the Board does not offer any evidence that the current disclosures are not satisfactory. And the price of "consistency" will be very expensive for banks, especially smaller banks such as mine.

The proposal adopts a universal definition of "clear and conspicuous" that includes not only "*designed to call attention to*", but also "*reasonably understandable*". For regulations such as Regulation Z, this goes beyond the current requirement that disclosures be noticeable. The requirement that the disclosures be "reasonably understandable" is new, and would require banks to significantly revise current disclosures to:

- Present the information in the disclosures in clear, concise sentence, paragraphs, and sections;
- Use short explanatory sentences or bullet lists whenever possible,
- Use definite, concrete, everyday words and active voice whenever possible;
- Avoid multiple negatives;
- Avoid legal and highly technical business terminology whenever possible; and

- Avoid explanations that are imprecise and readily subject to different interpretations.

Further, the proposals further attempt to mandate the format and design of these disclosures in order to "call attention" to them by requiring banks to:

- Use plain-language heading to call attention to the disclosures;
- Use a typeface and type-size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;
- Provide wide margins and ample line spacing;
- Use boldface or italics for key words; and
- In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

In addition, the proposals do not clearly explain what other information can, should, or should not, be included with the required disclosures. The proposals state;

> "Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. *However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met."* (Emphasis added).

My concerns with the proposals are as follows:

***Requirements are unclear and will invite expensive lawsuits:*** Terms such as "everyday words" "legal terminology," "explanations that are imprecise" and even "wide margins" are unclear, especially with regard to complicated disclosures typical of Regulation Z. Also, it is not clear how institutions should apply the examples to different types of disclosures, such as ATM receipts. While the proposal says that the examples are "optional," courts cannot be expected to agree. Even if the bank wins a lawsuit, it still pays the cost of defending itself. The subjectivity of the proposal will invite lawsuits, as well as result in multiple interpretations by examiners and bankers alike on this issue.

***The proposals will impose an expensive regulatory burden:*** Under the proposal, banks will have to review every disclosure required under Regulations B (ECOA), E (EFTA), M (Consumer Leasing), Z (TILA), and DD (TISA) and determine whether bullet points should be added, margins widened, line spacing adjusted. They will have to also be examined for "understandability," that is whether they are too legal sounding and lack "everyday words," a very subjective standard. Banks will then bear the cost of redrafting and reproducing many if not all of disclosures. It is probable that some adjustment will have to be made to each required disclosure. The requirements related to font size, margin size, headings, and bullets will drastically increase the length of the disclosures, and add new costs to banks.

***The revised disclosures may be less helpful to consumers:*** Because the requirements will lengthen the disclosures, in some cases, by pages, consumers will be less inclined to review them. In addition, many banks include additional information that is useful to consumers, especially on the back of checking account and credit card account statements. Institutions will have to omit this useful information or pay for the additional paper. Some related required disclosures may end up segregated.

***The regulations affected by the proposal are different from Regulation P and are not suited to this approach:*** Regulation P requires generic disclosures that are not specific to any particular transaction or disclosure. A single disclosure, once completed, typically applies to all of the institution's account, so compliance is much simpler. Applying the same standard to the plethora of various disclosures in the other regulations presents a very different project. In addition, unlike the other consumer protection regulations, there is no civil liability for violations of Regulation P, meaning Regulation P doesn't invite lawsuits for good faith compliance.

***The Board has not identified a problem with existing regulations and disclosures to justify the compliance burden and potential liability:*** The Board explains the purpose of these proposed changes is to facilitate compliance and to ensure consumers understand the disclosures. While generally, banks appreciate consistency among regulations to make compliance easier, it is not justified or workable in this case. Addressing the second purpose, the proposals do not provide evidence of an actual problem in this area. The proposals include no examples or explanations of where the disclosures are confusing or unclear. If such examples exist, I would suggest that the Board consider taking an alternative approach, such as identifying the problem disclosures and addressing them specifically.

Thank you for taking the time to review and consider these comments.

Sincerely,

Jeffrey A. Hubbard
Vice President - Audit & Risk Management